

IN THE
SUPREME COURT OF OHIO

ORIGINAL

EDWARD ROYAL BUNSTINE, ESQ.

32 South Paint Street

Chillicothe, OH 45601

Attorney Registration No. (0030127)

Respondent

CASE NO. 2011-0647

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Columbus, OH 43215

Relator

**RELATOR'S ANSWER TO
RESPONDENT'S OBJECTIONS TO
THE BOARD OF COMMISSIONERS'
REPORT AND RECOMMENDATIONS**

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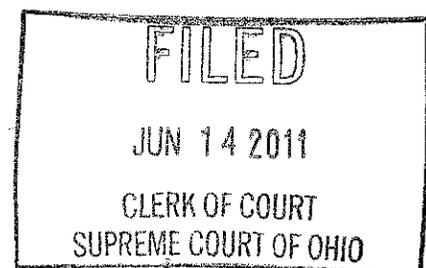


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Disciplinary Counsel, Relator	:	
	:	
	:	CASE NO. 2011-0647
	:	
Edward Royal Bunstine Respondent	:	RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS TO THE BOARD OF COMMISSIONERS' REPORT AND RECOMMENDATIONS
	:	
	:	

**RELATOR'S ANSWER TO RESPONDENT'S
OBJECTIONS TO THE BOARD OF COMMISSIONERS'
REPORT AND RECOMMENDATIONS**

Now comes relator, Disciplinary Counsel, and hereby submits this answer to respondent's objections.

By clear and convincing evidence the board found violations of Prof. Cond. Rule 8.4(c), Prof. Cond. Rule 8.4(d) and Prof. Cond. Rule 8.4(h).

The board found mitigation pursuant to BCGD Proc. Rule 10(B)(2) of no prior discipline and other sanction in that respondent pled "no contest" to a misdemeanor charge. The board found aggravation of a dishonest or selfish motive and refusal to acknowledge the wrongful nature of the conduct. BCGD Proc. Rule 10(B)(1).

The board recommended a six month suspension.

The board's report was certified to this Court on April 21, 2011. This Court issued a Show Cause Order on May 10, 2011. Respondent's objections were filed on May 31, 2011. It is to those objections that relator now responds.

STATEMENT OF FACTS

On September 17, 2007, respondent received a call from Natalie Creed who told him that a Ross County Sheriff's deputy had been to her house to interview her husband, Russell Creed. Natalie Creed told the respondent that a couple, Nolan "Ed" and Evonna "Bonnie" DeLong, had called the sheriff's office regarding some missing prescription pain medicine. (Tr. at 34, 35).

Because respondent knew the DeLongs, he offered to contact them and talk to them. (Tr. at 35). Respondent told Natalie Creed that he would talk to the DeLongs and find out the facts for her. (Tr. at 38). Respondent did not tell Natalie Creed that he represented Bonnie DeLong in her dissolution with Ed DeLong or that he was giving Bonnie DeLong legal advice. (Tr. at 36, 106).

Before respondent talked to the DeLongs, he talked to Russell Creed. (Tr. at 54, 56). The morning respondent was going to see the DeLongs, respondent met with Russell Creed at his office. Russell Creed was aware that respondent was going to see the DeLongs. (Tr. at 54, 56). Russell Creed told the respondent his side of the incident and asked what he should do. (Tr. at 56, 57). Respondent told Russell Creed that he would "go out and talk to Ed and Bonnie DeLong and see what they said." He would get back to Russell Creed after he talked to the DeLongs. (Tr. at 57).

Respondent called the DeLongs the next day, September 18, 2007, and asked if he could come to their home and talk to them about the incident involving Russell Creed. (Tr. at 38, 39, 41). Respondent went to the DeLong's home and spent three hours with them. (Tr. at 38).

At the time respondent went to see the DeLongs he was aware that a deputy from the sheriff's office had been to talk to the DeLongs. (Tr. at 39). He assumed that the DeLongs had

given oral and maybe written statements to the police. Respondent never saw these statements. (Tr. at 40). And he never asked the DeLongs what they told the police. (Tr. at 64, 72, 73).

While at the DeLong's house, respondent offered to draft Voluntary Statements for the DeLongs. (Tr. at 41). He returned to their home on September 19, 2007 and executed a Voluntary Statement for Ed DeLong and one for Bonnie DeLong. The Voluntary Statements are notarized by respondent. (Tr. at 43, Jt. Ex. 1 & 2¹).

Respondent testified that he went to talk to the DeLongs as a friend to all of the people involved. (Tr. at 39). He claimed he was not representing anyone in the situation. (Tr. at 39, 46).

Respondent also had additional conversations with Natalie Creed. Respondent had multiple conversations with her over the two or three days after their initial telephone call on September 17, 2007. Respondent spoke to Natalie Creed over the telephone and saw in her in person, at all times talking about the incident involving the DeLongs. (Tr. at 36, 37).

Respondent testified that he drafted the Voluntary Statements based on his conversations with the DeLongs and information he received from the Creeds. (Tr. at 54, 58). However, in contradiction, respondent later testified that he used only information from the DeLongs in drafting the Voluntary Statements. (Tr. at 58, 67).

The Voluntary Statement for Bonnie DeLong contained information that she shared prescription pills with Russell Creed. (Jt. Ex. 1). Respondent initially testified that he did not believe that this information could potentially expose Bonnie DeLong to a criminal investigation. (Tr. at 63, 64). Respondent later testified that he was concerned about Bonnie DeLong because of the information regarding her sharing of pills with Russell Creed. (Tr. at 73). Respondent

¹ At the hearing, respondent stipulated to Relator's Exhibits 1-6.

admitted that he put information about Bonnie DeLong's participation in illegal activity in her Voluntary Statement. (Tr. at 105).

The Voluntary Statement of Ed DeLong went further in revealing information about Bonnie DeLong and Russell Creed sharing prescription pills. Ed DeLong's Voluntary Statement specifically stated that Bonnie DeLong and Russell Creed shared hydrocodone pills. (Jt. Ex. 1). The Voluntary Statement also stated that Russell Creed admitted to taking hydrocodone pills from Ed DeLong on September 17, 2007 because of this "past practice." (Jt. Ex. 1).

Both Voluntary Statements specifically state that respondent was to take the statements to the sheriff's office. (Jt. Ex. 1 & 2).

Respondent admitted that the affidavits benefit Russell Creed. (Tr. at 115, 229). In fact respondent testified "that's what I was hoping would happen." (Tr. at 115). However, immediately after testifying to the fact that was trying to help Russell Creed, respondent testified that he was not concerned with Russell Creed. (Tr. at 116). Throughout his testimony at the disciplinary hearing respondent gave conflicting testimony regarding who benefitted from the Voluntary Statements.

On September 20, 2007, respondent went to the sheriff's office to speak with Sheriff Nichols. (Tr. at 75). Respondent claims that he went to the sheriff's office as the friend of Bonnie DeLong, not as an attorney. (Tr. at 45, 46). Respondent testified that he did not represent the DeLongs at the time he went to the sheriff's office with the Voluntary Statements. (Tr. at 76).

At the sheriff's office, respondent was referred to Detective Dave Bower to whom respondent gave a recorded interview. (Tr. at 77, Jt. Ex. 3). Detective Bower told respondent at the beginning of the interview that he may have engaged in "wrongdoing." (Tr. at 78; Jt. Ex. 3). Respondent consented to continue the interview.

Detective Bower told the respondent that both Ed and Bonnie DeLong were alleging “wrongdoing” by respondent. (Jt. Ex. 3). Detective Bower tells the respondent that he had been to the DeLong’s home that morning, September 20, 2007, to speak with them about the Voluntary Statements. (Jt. Ex. 3). Respondent testified that he knew that Ed DeLong had made a statement that the Voluntary Statement contained false information before respondent went to the sheriff’s office. (Tr. at 87). Yet he still went to talk to Sheriff Nichols.

Respondent told Bower that he did not represent Russell Creed; however, respondent did say that he was aware that Russell Creed was supposed to meet with Detective Collins to provide a statement. (Tr. at 84; Jt. Ex. 3). The transcript of respondent’s interview with Detective Bower reveals that respondent knew Russell Creed was to meet with Detective Collins at 3:00 p.m. on Thursday, the same day respondent went to the sheriff’s office with the Voluntary Statements. (Tr. at 85; Jt. Ex. 3).

At no time did respondent tell Detective Bower that he represented either Russell Creed or the DeLongs. (Tr. at 163). Detective Bower was not under any belief that respondent represented the DeLongs. (Tr. at 165). In fact, Detective Bower did not believe that respondent had a client. (Tr. at 178).

Respondent gave Detective Bower a detailed statement of his conversation with the DeLongs and gave information regarding the exchange of pills between Bonnie DeLong and Russell Creed. (Jt. Ex. 3). Respondent wanted to get the information about the exchange of pills “out in the open.” (Tr. at 85). Respondent admitted that he did not know if Detective Bower had anything to do with the underlying investigation involving Creed’s theft of pills from Ed DeLong. (Tr. at 85, 86).

Respondent never asserted that he represented the DeLongs until Detective Bower asked for the Voluntary Statements. Respondent at that time said that he had a “responsibility as an

attorney to protect documents that were prepared that Ed and Bonnie signed.” (Jt. Ex. 3).

Respondent testified that this was his assertion of the attorney-client privilege for the documents. (Tr. at 79). Respondent testified that the attorney-client privilege pertained to the documents themselves. (Tr. at 79, 80).

After calling Ed and Bonnie DeLong to obtain their consent for respondent to give the Voluntary Statements to Detective Bower, respondent turned over the statements. (Tr. at 88, 89, 164).

While still at the sheriff’s office, respondent had two additional conversations with Detective Bower. (Tr. at 166). During the first conversation respondent tried to “clean up” what just happened; respondent tried to clarify his interview statement. (Tr. at 167).

Respondent next went to Sheriff Nichols’ office. Detective Bower was in the office to let Sheriff Nichols listen to the taped interview with respondent. (Tr. at 167). Respondent asked Detective Bower for the Voluntary Statements so that he could rip them up. (Tr. at 168). He was not given the Voluntary Statements.

Respondent testified that the plain language of the Voluntary Statements, requesting that they be given to the sheriff’s office, did not authorize him to release them. (Tr. at 80, 81).

After leaving the sheriff’s office, respondent called the DeLongs several times. The first time he spoke with both Ed and Bonnie DeLong. (Tr. at 90, 91). Respondent wanted to know why Ed DeLong contacted the sheriff’s office regarding the statements and did not call the respondent. (Tr. at 91). Ed DeLong did not tell the respondent about his conversation with Detective Bower. (Tr. at 91). The second call was to Bonnie only and respondent told Bonnie what happened to him at the sheriff’s office. (Tr. 90, 91).

On October 1, 2007, respondent had Bonnie DeLong sign an affidavit. (Jt. Ex. 4). Respondent did not prepare this affidavit at Bonnie DeLong’s request. (Tr. at 93, 95).

Respondent drafted the affidavit and called Bonnie DeLong to come to his office to sign it. (Tr. at 94). Respondent drafted this affidavit because he knew that the “sheriff was looking at me for tampering with evidence because I had told Detective Bower that I was going to destroy the Voluntary Statements.” (Tr. at 94). Respondent wanted Bonnie DeLong to sign an affidavit stating that he had authority to destroy the statements. (Tr. at 94).

At the disciplinary hearing, respondent testified that he created the information contained in the October 1, 2007 affidavit and that Bonnie DeLong did not tell him the information contained therein. (Tr. at 95, 96).

He did not get a corresponding affidavit from Ed DeLong. (Tr. at 97). Respondent testified that he did not think an affidavit from Ed DeLong would have been helpful. (Tr. at 97). Ed DeLong had been identified as the “victim” in the investigation against respondent. (Tr. at 171).

Respondent gave the October 1, 2007 affidavit of Bonnie DeLong to the sheriff’s office. (Tr. at 97, 98).

Special prosecutors were appointed to review and potentially prosecute respondent for his actions regarding the investigation of Russell Creed. (Tr. at 140).

On November 9, 2007 respondent knowingly gave a recorded interview with special prosecutors Paul Scarcella and Bridget Carty, n.k.a. Coontz. (Tr. at 100; Jt. Ex. 5).

In this interview, respondent said that he represented the DeLongs. (Tr. at 100; Jt. Ex. 5). Respondent testified that the representation started when he typed the Voluntary Statements. (Tr. at 100). However, respondent admits that the DeLongs never asked him to represent them and he never entered into any type of attorney-client agreement with them and did not have a fee agreement. (Tr. at 101, 102). Respondent claimed the representation did not continue after the Voluntary Statements were drafted and pertained to the Voluntary Statements only. Respondent

alleged that the representation continued only as long as he was in possession of the Voluntary Statements. (Tr. at 102, 103).

Respondent also told the special prosecutors that he was representing Bonnie DeLong in her dissolution with Ed DeLong. (Tr. at 106; Jt. Ex. 5). However, at the disciplinary hearing, respondent gave conflicting testimony. He stated that he was Bonnie DeLong's attorney but that on September 18, 2007 when he talked to her about Russell Creed, he was not her attorney. (Tr. at 107). Respondent also testified that he did not represent Bonnie DeLong in her dissolution but that he gave her legal advice about her dissolution. (Tr. at 107, 108).

During the interview on November 9, 2007, respondent told the special prosecutors that Bonnie DeLong and Russell Creed exchanged pills. (Tr. at 106; Jt. Ex. 5). Respondent told the special prosecutors that there was damaging evidence in the Voluntary Statements about Bonnie DeLong. (Tr. at 106; Jt. Ex. 5). Respondent also told the special prosecutors that he advised Bonnie DeLong to "take the Fifth" if asked about it. (Tr. at 105; Jt. Ex. 5).

However, Bonnie DeLong testified that respondent never told her to assert her rights under the Fifth Amendment to the U.S. Constitution. (Tr. at 207). Bonnie DeLong also testified that she learned that the Voluntary Statements could expose her to a criminal investigation from Detective Bower, not respondent. (Tr. at 208, 209).

On November 13, 2007, respondent sent a letter to the special prosecutors. (Jt. Ex. 6). In the letter he claims to have drafted the Voluntary Statements to help Bonnie DeLong because he thought she was in jeopardy of criminal charges. (Tr. at 112; Jt. Ex. 6). Respondent testified at the hearing that his focus was on helping Bonnie DeLong when he drafted the Voluntary Statements. (Tr. at 113). This testimony is contradicted by respondent's testimony just a few pages later that he wanted the Voluntary Statements to help Russell Creed. (Tr. at 115, 116).

Respondent's November 13, 2007 letter to the special prosecutors states that respondent was going to "spin a different light in regards to the incident involving Russell Creed." (Jt. Ex. 6).

Around the same time that respondent drafted the Voluntary Statements, Russell Creed gave respondent \$1000. (Tr. at 129). Respondent thought that he received the money the week after he drafted the Voluntary Statements. (Tr. at 130).

Respondent testified that he told Russell Creed he did not want the money but Russell Creed left the money anyway. (Tr. at 129, 130).

Respondent put the money in his desk drawer. (Tr. at 131). Respondent did not return the money to Russell Creed. (Tr. at 134). Respondent testified that "not one time" did he think about returning the money to Russell Creed. (Tr. at 134). He also testified that he hoped to hold onto the money and "when this was over" return the money. (Tr. at 134).

Respondent held the money in his desk drawer for eight months until Russell Creed made a statement to the special prosecutors disclosing that he gave \$1000 to respondent. (Tr. at 235). Respondent turned the money over to the sheriff's office on May 29, 2008. (Tr. at 131, 132).

Respondent ultimately pled guilty to disorderly conduct in 2009 in relation to this matter. (Tr. at 147, 149, 151).

RELATOR'S ANSWER TO RESPONDENT'S OBJECTIONS

I. The Board Properly Found that Respondent Violated Prof. Cond. Rule 8.4(d) and Prof. Cond. Rule 8.4(h).

Relator will address respondent's first two objections as one as the facts relating to each objection are the same.

Respondent claims that the board improperly found that he violated Prof. Cond. Rule 8.4(d) and Prof. Cond. Rule 8.4(h). Respondent attempts to claim that this is because the facts as recited in the board report are incomplete. Respondent then attempts to explain the facts contained in the board report. However, in doing so, he merely highlights that the facts as found by the board are correct. In fact, respondent often admits that he agrees with the board's finding.

Respondent claims that because he was acting as the attorney for Ed and Bonnie DeLong his actions do not constitute ethical misconduct. This statement contradicts Bonnie DeLong's testimony at the hearing. Bonnie DeLong herself testified that respondent was not acting as her attorney.² (Tr. 213, 215).

In this case, respondent voluntarily inserted himself into a criminal investigation involving Russell Creed and the victims, Ed and Bonnie DeLong. Respondent offered to go talk to the DeLongs after he received a telephone call from the wife of Russell Creed, who was the focus of the criminal investigation. Respondent did not represent Russell Creed, but testified he was a friend of all involved. (Tr. at 39, 46).

Respondent claims that attorney-client privilege was created by the fact that he is an attorney and that he drafted the Voluntary Statements. According to respondent, the attorney-client privilege extended to the documents only. (Tr. at 80, 102). Respondent testified that he represented the DeLongs as to the statements as long as the Voluntary Statements were in his possession. (Tr. at 103). Respondent believes that this attorney-client privilege excuses his behavior in drafting Voluntary Statements that implicate Bonnie DeLong in criminal activity. Respondent also believes that attorney-client privilege excuses his actions at the Ross County

² Respondent's brief states that Bonnie DeLong doesn't remember the conversation wherein he agreed to be her attorney. Respondent did not make this claim at the hearing when Bonnie DeLong was on the stand. To now claim that Bonnie DeLong had a faulty memory when it serves respondent's purposes is disingenuous.

Sheriff's Department when presenting the information contained in the affidavits to Detective Bower, initially refusing to give the affidavits to Detective Bower and then asking for the affidavits back to destroy them.

Under questioning by the panel, respondent testified to the following regarding attorney-client relationships:

Q. How does a friend of yours know when they're a client and when they're a friend?

A. I don't think they do, you know.

Q. So you get to decide it?

A. No. I think that if---I didn't say to Bonnie, "Bonnie, I'm going to represent you," okay? I didn't say that. But I thought that by the creation of those supplemental statements, I thought that put in me in that position.

Q. So in this—The way you're talking, if you were- if you and I were friends and you gave me legal advice, I wouldn't necessarily be a client. Until you did a document, I'm not a client?

A. Well, it depends on the legal advice that I would give you.

Q. So sometimes legal advice makes me a client?

A. I think it does.

(Tr. at 227, 228).

Respondent admits in his brief that the person who benefitted from respondent's actions was Russell Creed. He admitted the same in his testimony at the hearing. (Tr. at 115, 229). The Voluntary Statements, on their face, implicate Bonnie DeLong in criminal activity and may have contradicted the statements that the DeLongs gave to Ross County Sheriff's Department investigators. (Jt. Ex. 1 & 2). Respondent testified that he did not ask the DeLongs what they

told investigators and did not know if the Voluntary Statements offered contradictory information. (Tr. at 64).

Respondent offers clearly contradictory testimony on this matter. It is obvious from the Voluntary Statements that respondent was not acting in the best interests of the DeLongs.

The panel directly questioned respondent regarding his credibility in preparing the Voluntary Statements that included information about the exchange of pills:

Q. And you understand from a credibility standpoint how it much look if you get a phone call from somebody who may be charged with a crime that you claim you don't represent, and then you go and then prepare some statements that help him, but he's not your client and it's detrimental to the person that you claim is your client?

A. I know. I know.

(Tr. at 232).

In fact, respondent accepted \$1,000 from Russell Creed within weeks of drafting the Voluntary Statements. (Tr. at 129,130). The panel found that respondent's acceptance of the money, which he held for over eight months, contradicted respondent's statements that he was not "acting for or representing Russell Creed." (Report at 21). Respondent kept the money in a desk drawer until Russell Creed disclosed its existence to the special prosecutors. (Tr. at 131, 235). Respondent admitted that he did not take any measures to return the money to Russell Creed. (Tr. at 134, 135).

The totality of respondent's actions in this matter show that he inserted himself into the middle of a criminal investigation with the purpose of benefitting Russell Creed, the subject of the investigation. To accomplish this goal, respondent had the victims of the crime sign supplemental statements that contained information about Bonnie DeLong's involvement in illegal conduct. When respondent himself became the focus of an investigation, he changed his

story to claim that he represented the DeLongs, despite the fact that Bonnie DeLong states the respondent did not represent them. He also began stating that it was his intention to destroy the statements from the beginning in contradiction of the plain language of the statements and the fact that he took the statements with him to the sheriff's office.

This Court has found a wide range of conduct to be prejudicial to the administration of justice and adversely reflecting on a lawyer's fitness to practice law. Although the cases often involve an attorney's conduct in a pending court case, it is not a requirement to find a violation of Prof. Cond. Rule 8.4(d).

In *Disciplinary Counsel v. Shaw*, 126 Ohio St.3d 494, 2010-Ohio-4412, 935 N.E.2d 405, this Court found violations of DR 1-102(A)(4) & (5), the equivalent of Prof. Cond. Rule 8.4(d) and (h), where an attorney drafted a revocable trust for a client wherein the attorney named his children as beneficiaries.

This Court found the same violations in *Disciplinary Counsel v. Freeman*, 119 Ohio St.3d 330, 2008-Ohio-3836, 894 N.E.2d 31. The attorney in this case used his trust account to pay personal bills resulting in 14 overdrafts in four years.

This Court suspended the license of an attorney for notifying a former client that the FBI and local law enforcement were planning a drug raid in the client's county. The client was arrested and agreed to testify against the attorney, who was convicted of attempted obstruction of justice. The attorney was found to have violated DR 1-102(A)(3)(4)(5) & (6). This Court issued a one year suspension with six months stayed and appointed a monitor. *Disciplinary Counsel v. Klaas*, 91 Ohio St.3d 86, 2001-Ohio-276, 742 N.E.2d 612.

Respondent's conduct in this matter supports the board's finding of violations of Prof. Cond. Rule 8.4(d) and (h). Respondent became involved in a criminal investigation without being asked to represent anyone. When respondent's behavior became the focus of a separate

criminal investigation, respondent suddenly began claiming that he represented the Voluntary Statements and/or Bonnie DeLong.

II. The polygraph examination of respondent taken by Brad Kelly and testimony of Brad Kelly was properly excluded from respondent's disciplinary hearing.

The panel ordered the parties to brief the admissibility of the polygraph examination of respondent taken by Brad Kelly and corresponding testimony. The panel correctly found the evidence inadmissible.

This Court issued the seminal case regarding admission of polygraph examinations in *State v. Souel* (1978), 53 Ohio St.2d 123, 372 N.E.2d 1318. This Court held that there are certain criteria for the use of polygraph examinations. The most important of those criteria is that the examination and its admission must be stipulated to by both sides. The stipulations entered into must be in writing and specify the examiner to be used by agreement. Further, the polygraph examination results can only be used for a limited purpose; they can only impeach or corroborate testimony and not prove truthfulness or exculpation.

In other words, the polygraph examination must be agreed to by the parties to the case in which is it to be used and the polygraph examiner must be agreed upon and stipulated to.

Although *Souel* is a criminal case, the same criteria have been extended to civil cases through *Zanesville v. Sheets* (1987), 38 Ohio App.3d 24, 525 N.E.2d 842.

The use of a polygraph examinations in a disciplinary proceeding has been rejected by this Court in *Toledo Bar Assn. v. Westmeyer*(1991), 58 Ohio St.3d 38, 567 N.E. 2d 1016.

Westmeyer attempted to admit as evidence testimony of two polygraph examiners and their associated examinations. In that case, Westmeyer filed a *Motion in Limine* which was denied. Westmeyer then filed a motion under Civ.R. 7(B) to admit the testimony. The panel determined that the evidence could be admitted if this Court ordered it admitted, this Court overruled *State v.*

Souel, supra, or the relator stipulated to their admission. Westmeyer was subsequently suspended and objected to the suspension on the basis that the polygraph evidence should have been admitted by the panel. This Court held that “the panel did not err in refusing to admit the polygraph examinations.” *Id.* at 39, 1018. The Court held that since the first two conditions did not occur, the relator would have to have stipulated to the examination pursuant to *Souel, supra*. Absent compliance with the stipulations in *Souel, supra*, the examinations and the testimony were inadmissible.

In this matter, respondent paid Brad Kelly to take the polygraph examination in 2007. It was not performed in contemplation of the current disciplinary matter, but in relation to respondent’s criminal charges. Relator did not stipulate to the submission of the expert testimony or polygraph examinations.

The exclusion of the polygraph examination of respondent by Brad Kelly and Kelly’s testimony was proper.

III. The board properly found the stated aggravating factors of a dishonest or selfish motive and failure to accept responsibility for the wrongful nature of the conduct.

Respondent disputes the board’s finding that respondent had a dishonest or selfish motive in the facts and circumstances surrounding Russell Creed and the DeLongs. In essence, respondent purposefully and without invitation inserted himself into the middle of a criminal investigation when he didn’t represent anyone. He did it to help Russell Creed, a fact which he testified to repeatedly. (Tr. at 115, 229). Respondent wanted to make the situation better for Russell Creed and used the DeLongs in an attempt to do so. This is evidence of respondent’s selfish motive in being the one to fix the matter for Russell Creed and make it better.

Respondent also disputes that he has failed to accept responsibility for the wrongful nature of the conduct. Respondent claims in his brief that if he has committed misconduct then

he accepts full responsibility. In essence, respondent is saying that if this Court finds that he committed ethical misconduct then he'll accept responsibility. However, respondent is not accepting responsibility for his conduct now and he did not accept responsibility for his conduct at the hearing.

The board properly found the aggravating factors of a selfish motive and that respondent has not expresses remorse for his conduct.

IV. The record supports the board's finding that respondent violated Prof. Cond. Rule 8.4(c).

Respondent claims that the board improperly found that he violated Prof. Cond. Rule 8.4(c) and changed the recommended panel sanction of public reprimand to a six month actual suspension. The board found that respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, including his offers to destroy evidence that he had created.

The facts of this case are replete with instances where the respondent made misrepresentations or acted dishonestly.

When it came to deciding whom respondent represented- if anyone- respondent gave several conflicting statements.

Respondent claimed to act only as a friend of both the Creeds and DeLongs and not as an attorney when he first talked to Natalie Creed and went out to talk to the DeLongs. (Tr. at 39, 46). Respondent claims that he went to the sheriff's office as the friend of Bonnie DeLong, not as an attorney. (Tr. at 45, 46).

When it became clear to respondent that he may be the focus of an investigation, he claimed to have attorney-client privilege that applied to the Voluntary Statements. (Tr. 79,80). The attorney-client privilege existed only as long as the Voluntary Statements were in his possession. (Tr. at 102, 103).

As the investigation against respondent progressed, he claimed to be the attorney for Bonnie DeLong. (Tr. 108, Jt. Ex. 5). He claimed to represent Bonnie DeLong in her dissolution (Jt. Ex. 5).

At the disciplinary hearing, respondent testified he was Bonnie DeLong's attorney and gave her advice regarding her dissolution. (Tr. at 108). However, respondent also testified that when he went to Ed and Bonnie DeLong's house on September 18, 2007 he was not her attorney. (Tr. at 107).

Respondent admits that he offered to destroy the Voluntary Statements. He wants this Court to believe that was the plan from the beginning. However, respondent's testimony contradicts the plain language of the Voluntary Statements. The Voluntary Statements state that it is the intention of Ed and Bonnie DeLong that the statements are to be given to the Sheriff's Office. (Jt. Ex. 1&2).

Respondent did not mention destroying the statements until after he talked to Detective Bower. Once respondent became aware that his conduct in preparing the statements was at issue, he wanted to destroy them. (Tr. at 167, 168). After becoming aware that an investigation might have been opened against him, respondent drafted an affidavit for Bonnie DeLong to sign which supported respondent's story that he was supposed to destroy the statements. (Tr. at 94; Jt. Ex. 4). Respondent testified that he created this affidavit to give to the sheriff's office. (Tr. at 96). Respondent was taking steps to stop the investigation into his actions.

Respondent now claims that there was no reason to include the intention to destroy the statements in the documents themselves, however, he included the specific intention that the statements were supposed to given to the Sheriff's Office. (Tr. at 81, 82; Jt. Ex. 1 & 2).

Respondent alleges in his brief that the Voluntary Statements were to be destroyed if they were untrue. Respondent testified that the Voluntary Statements were based on information he

received from the DeLongs on September 18, 2007 when he went to their house. (Tr. at 50, 51, 58). At no time during his testimony at the disciplinary history did respondent claim that the information was not true or suspect. In fact, he claims to have gotten the same information from the Creeds and DeLongs. (Tr. at 54).

This Court has held that a violation of Prof. Cond. Rule 8.4(c) requires an actual suspension. *Disciplinary Counsel v. Fowerbaugh*, 74 Ohio St.3d 187, 1995-Ohio-261, 658 N.E.2d 237; *Disciplinary Counsel v. Rooney*, 110 Ohio St.3d 349, 2006-Ohio-4576, 853 N.E.2d 663.

The presence of “significant mitigating factors can warrant a departure” from the principle that an actual suspension is required. *Disciplinary Counsel v. Potter*, 126 Ohio St.3d 50, 2010-Ohio-2521, 930 N.E.2d 307, citing *Disciplinary Counsel v. Rohrer*, 124 Ohio St.3d 65, 2009-Ohio-5930, 919 N.E.2d 180.

Significant mitigating factors do not exist in this case. The board found that respondent does not have prior discipline and that he received a separate sanction by virtue of his “no contest” misdemeanor plea.³ These two factors do not represent significant mitigating factors and should not cause a departure from an actual suspension in this matter.

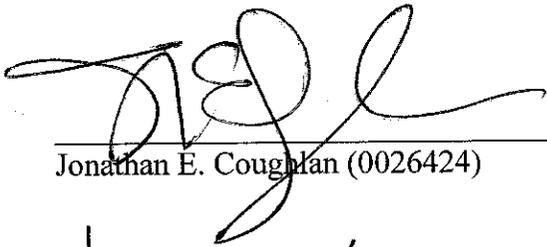
The board recommended the proper sanction in this case and the sanction of a six month actual suspension should be affirmed.

CONCLUSION

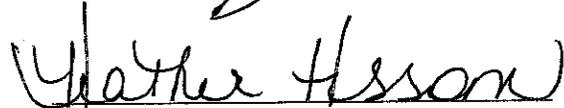
This Court should affirm the sanction recommendation of the board and suspend respondent’s license to practice law for six months.

³ There is no testimony in the record regarding respondent’s sentencing and documents related to respondent’s plea and sentencing were excluded from evidence by the panel. (Tr. at 182).

Respectfully submitted,



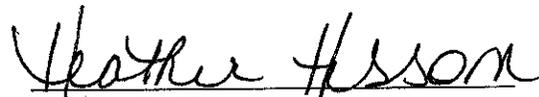
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing answer brief was served via U.S. Mail, postage prepaid, upon respondent, Edward Royal Bunstine, Esq., Bunstine Law Office, 32 South Paint Street, Chillicothe, OH 45601, , and upon Jonathan W. Marshall, Secretary, Board of Commissioners on Grievances and Discipline, 41 S. High Street, Suite 2320, Columbus, Ohio 43215 this 14th day of June, 2011.



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